

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, September 1, 2015**

General Session Meeting Minutes

The Judicial Merit Commission met on Tuesday, September 1, 2015, for its regularly scheduled quarterly meeting. The meeting was conducted in the Tang Conference Room located at 101 W. Jefferson Street, East Court Building, Law Library, 3rd Floor.

I. Meeting Convened

The meeting was called to order at 2:00 p.m. with the following members in attendance: Commissioners Craig Waugh (Chairman), Logan Young, Anna Baca, Judith Clinton, and Lauren Eiler.

Also in attendance were Danna Quinn, Secretary to the Commission, Jamie Ahler, Employee Relations Administrator, and Billie Berry, Human Resources Associate.

II. Approval of the Minutes

Commissioner Waugh called for a motion to approve the proposed revised minutes of the 2 June 2015 Quarterly General Session.

Motion: Commissioner Young moved to approve the minutes of the 2 June 2015 Quarterly General Session, as amended.

Commissioner Waugh seconded the motion.

The minutes of the 2 June 2015 Quarterly General Session were approved with 2 in favor, none opposed, and 2 abstentions.

III. Commissioner Waugh welcomed Lauren Eiler as a new member to the Commission. Commissioner Eiler shared that she is an inactive member of the Arizona State Bar and currently works as a Legal Nurse Consultant performing medical malpractice defense work. Commissioner Eiler stated she was formerly employed with the Court as the Human Resources Director for the Adult Probation Department and has considerable experience in the legal and employment sector.

Commissioner Eiler was welcomed by all members of the Commission.

IV. Appeals Pending Notification of Status

1. Theresa Topf-Fife v. Judicial Branch Jury Administration Department – Termination

Secretary Quinn reported Ms. Topf-Fife was terminated on June 18, 2015, and filed a timely appeal of that termination. A hearing was scheduled to convene on August 3, 2015, before Hearing Officer Harold Merkow. Ms. Topf-Fife informed all parties on July 31, 2015, that due to financial hardship, and incomplete and insufficient documents and records requested, she wished to withdraw her appeal.

Discussion ensued regarding Ms. Topf-Fife's stated reasons for withdrawal of her appeal. Staff reported all records maintained by the Jury Administration Department and the Judicial Branch Personnel Office were provided to the Attorney General's Office for disclosure to Ms. Topf-Fife. Assigned counsel for the Court, Attorney General Robert Sokol, confirmed Ms. Topf-Fife received all records and documents she requested, with the exception of the monthly statistics, which were not maintained by the Jury Department.

2. Jessica Dang v. Juvenile Probation Department - Termination

Secretary Quinn reported Ms. Dang was terminated on July 23, 2015, and filed an appeal of her termination. A hearing was scheduled to convene on September 4, 2015. The parties entered into a Settlement Agreement on August 21, 2015, and Ms. Dang withdrew her appeal and resigned in lieu of termination.

V. Appeals Pending Decision

1. Samuel Buchanan v. Juvenile Court of Maricopa County – Demotion

Commissioner Waugh stated Mr. Buchanan was demoted on March 9, 2015, and filed an appeal of that demotion. The appeal was assigned to Hearing Officer Douglas Erickson, however, Mr. Buchanan resigned his employment on April 5, 2015, but did not withdraw the appeal. Despite repeated efforts by staff and the Hearing Officer to contact Mr. Buchanan regarding his appeal, no communication or withdrawal of appeal was received from Mr. Buchanan. The Hearing Officer determined to continue with the hearing, in absentia, and recommended in his Findings of Fact, Recommendation, and Conclusions of Laws dated June 9, 2015, to deny Respondent's Motion to Dismiss and uphold the disciplinary action. No opposition to the Hearing Officer's report was received from the appellant.

Discussion ensued and the Commission moved by consensus to execute its Decision Summary in *Samuel Buchanan v. Juvenile Court of Maricopa County*.

Motion: Commissioner Baca moved the Commission find that the disciplinary action taken against the appellant was appropriate, was not arbitrary, was not taken without reasonable cause, and to adopt the findings and conclusions of the hearing officer.

Commissioner Young seconded the motion.

The motion was unanimously approved by a vote of 4 in favor, none opposed, and no abstentions.

The Commission issued its Decision and Order dated 1 September 2015 in *Samuel Buchanan v. Juvenile Court of Maricopa County* to adopt the findings and conclusions of the Hearing Officer and dismiss the appeal.

2. Marcella Goldsberry v. Maricopa County Family Court - Termination

In the matter of *Marcella Goldsberry v. Maricopa County Family Court*, Commissioner Waugh stated that Ms. Goldsberry was terminated on February 23, 2015, and filed an appeal of her termination. The appeal was assigned to Hearing Officer Stacey Gabriel and convened telephonically on March

27, 2015. The hearing was continued to April 28, 2015, and concluded on May 2015. The Hearing Officer recommended in her Findings of Fact, Conclusions of Law, and Recommendation dated June 23, 2015, to sustain the dismissal. No opposition to the Hearing Officer's report was received from the appellant.

Commissioner Baca stated she questioned why the Appointing Authority and Jury Department representative, in making the final determination to terminate Ms. Goldsberry, did not take into consideration the fact that Ms. Goldsberry received an acceptable performance evaluation shortly before she was placed on a Performance Improvement Plan.

Discussion ensued and all Commissioners were in agreement that the performance evaluation should have been considered in the decision making process and, more generally, known performance issues should be addressed in performance evaluations. To the extent that the performance evaluation process highlights strengths without addressing weaknesses, the Commission suggested that this issue might need to be addressed by Court Administration.

The Commission then moved by consensus to execute its Decision Summary in *Marcella Goldsberry v. Maricopa County Family Court*.

Motion: Commissioner Waugh moved the Commission find that the disciplinary action taken against the appellant was appropriate, was not arbitrary, was not taken without reasonable cause, and to adopt the findings and conclusions of the hearing officer.

Commissioner Eiler seconded the motion.

The motion was unanimously approved by a vote of 4 in favor, none opposed, and no abstentions.

The Commission issued its Decision and Order dated 1 September 2015 in *Marcella Goldsberry v. Maricopa County Family Court* to adopt the findings and conclusions of the Hearing Officer and dismiss the appeal.

VI. Consideration of Proposing Amendment to Judicial Merit System Rules – Failure to Prosecute Appeal

Commissioner Waugh reiterated that during discussion of the *Samuel Buchanan v. Juvenile Court of Maricopa County* appeal at the Commission's last quarterly meeting, questions were raised concerning procedural issues with regard to an appellant who resigns his or her employment during the pendency of an appeal, but fails to withdraw the appeal. As a result, the Commission requested this issue be placed on the agenda for consideration of addressing how to proceed when an employee resigns his or her employment while an appeal is pending and fails to participate in the appeal thereafter.

Commissioner Waugh queried the Commission regarding their view as to how the Commission should proceed.

Commissioner Young suggested the Commission consider proposing an addition or amendment to the Judicial Merit Rules to clarify that when an appellant fails to participate in the appellate process,

or fails to appear for the appeal hearing, that the appellant has waived or given up their right to a hearing.

The Commission questioned staff regarding the frequency of an appellant who resigned while an appeal was pending and failed to participate in the appeal process.

Staff stated that this occurs most often when an employee is terminated, or resigns after being demoted, and discontinues pursuit of the appeal.

The Commission requested that staff provide data regarding the number of instances wherein an appellant has resigned or failed to prosecute an appeal for discussion at the next Commission meeting.

VII. Executive Session

The Commission held no Executive Session.

VIII. Call to the Public

A call to the public was made by Commissioner Waugh, and no response to the call was made.

IX. Future Agenda Items

1. Frequency of appeals being abandoned without being withdrawn.

X. Meeting Adjournment

The Chair entertained a motion to adjourn.

Motion: Commissioner Young moved to adjourn the meeting. Commissioner Eiler seconded the motion, and the Commission approved it unanimously.

The meeting adjourned at 3:22 p.m.

Respectfully submitted,

Billie J. Berry
Staff to the Commission

For

Danna M. Quinn
Secretary to the Commission

Next Meeting: Tuesday, December 1, 2015 @ 2:00 p.m. in the Tang Conference Room